EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42560
Ben B. Parks d/b/a Super Stop 28
RN100813682
Docket No. 2011-1706-PST-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
5022 Dyer Street, El Paso, El Paso County

Type of Operation:
convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: March 30, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: $13,668

Total Paid to General Revenue: $0

Total Due to General Revenue: $13,668

Compliance History Classifications:
Person/CN – Poor
Site/RN – Poor

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: August 16, 2011

Date(s) of NOV(s): N/A

Date(s) of NOE(s): August 25, 2011

Violation Information

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].
2. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(3), (4), (5) and (6)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent no longer operates the Station as of March 27, 2012.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: January 24, 2012

Date(s) Green Card(s) Signed: January 26, 2012

Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Andrea Park, Waste Enforcement Section, (512) 239-4575

TCEQ Regional Contact: Kent Waggoner, El Paso Regional Office, (915) 834-4957

Respondent: Ben B. Parks, 3228 Mesa Verde Lane, El Paso, Texas 79904-3013

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	29-Aug-2011				
PCW	4-Jan-2012	Screening	15-Sep-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Ben B. Parks dba Super Stop 28		
Reg. Ent. Ref. No.	RN100813682		
Facility/Site Region	6-El Paso	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	42560	No. of Violations	2
Docket No.	2011-1706-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Andrea Park
		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)			*Subtotal 1*	$7,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1				
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.				
Compliance History	75.0%	Enhancement	*Subtotals 2, 3, & 7*	$5,625
Notes	Enhancement for two orders containing a denial of liability, one order without a denial of liability, and poor performer classification.			
Culpability	No	0.0% Enhancement	*Subtotal 4*	$0
Notes	The Respondent does not meet the culpability criteria.			
Good Faith Effort to Comply Total Adjustments			*Subtotal 5*	$0
Economic Benefit	0.0%	Enhancement*	*Subtotal 6*	$0
Total EB Amounts	$558	**Capped at the Total EB $ Amount*		
Approx. Cost of Compliance	$1,000			
SUM OF SUBTOTALS 1-7			*Final Subtotal*	$13,125
OTHER FACTORS AS JUSTICE MAY REQUIRE	4.1%		*Adjustment*	$543
Reduces or enhances the Final Subtotal by the indicated percentage.				
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.			
			Final Penalty Amount	$13,668
STATUTORY LIMIT ADJUSTMENT			*Final Assessed Penalty*	$13,668
DEFERRAL	0.0%	Reduction	*Adjustment*	$0
Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*				
Notes	Deferral not offered for non-expedited settlement.			
PAYABLE PENALTY				$13,668

Screening Date	15-Sep-2011	**Docket No.**	2011-1706-PST-E	**PCW**
Respondent	Ben B. Parks dba Super Stop 28			*Policy Revision 2 (September 2002)*
Case ID No.	42560			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN100813682			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Andrea Park			

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for two orders containing a denial of liability, one order without a denial of liability, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 75%

Screening Date	15-Sep-2011	**Docket No.**	2011-1706-PST-E	**PCW**
Respondent	Ben B. Parks dba Super Stop 28			*Policy Revision 2 (September 2002)*
Case ID No.	42560			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN100813682			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Andrea Park			

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual testing was not conducted by the due date of October 26, 2010.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential	x		

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 1 | 294 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $5,000

One annual event is recommended for the period preceding the August 16, 2011 investigation date.

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $5,000

Economic Benefit (EB) for this violation

Estimated EB Amount $543

Statutory Limit Test

Violation Final Penalty Total $9,112

This violation Final Assessed Penalty (adjusted for limits) $9,112

Economic Benefit Worksheet

Respondent Ben B. Parks dba Super Stop 28
Case ID No. 42560
Reg. Ent. Reference No. RN100813682
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$500	26-Oct-2010	16-Aug-2011	1.72	$43	$500	$543
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated avoided cost to conduct the Stage II annual testing. The date required is the test due date and the final date is the investigation date.						

Approx. Cost of Compliance $500

TOTAL $543

Screening Date	15-Sep-2011	**Docket No.** 2011-1706-PST-E	**PCW**
Respondent	Ben B. Parks dba Super Stop 28		*Policy Revision 2 (September 2002)*
Case ID No.	42560		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN100813682		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Andrea Park		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.246(3),(4),(5), and (6) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the Stage II daily inspection log, test results, maintenance records, and employee training records were not available for inspection.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1

30 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended based on documentation of the violation during August 16, 2011 investigation.

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $15

Statutory Limit Test

Violation Final Penalty Total $4,556

This violation Final Assessed Penalty (adjusted for limits) $4,556

Economic Benefit Worksheet

Respondent Ben B. Parks dba Super Stop 28
Case ID No. 42560
Reg. Ent. Reference No. RN100813682
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$500	16-Aug-2011	15-Mar-2012	0.58	$15	n/a	$15
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost of maintaining Stage II records at the Station. The date required is the investigation date and the final date is the expected compliance date.

Avoided Costs — ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $500

TOTAL $15

Compliance History

Customer/Respondent/Owner Operator:	CN601574619	PARKS, BEN B	Classification: POOR	Rating: 130.00
Regulated Entity:	RN100813682	SUPER STOP 28	Classification: POOR	Site Rating: 130.00
ID Number(s):	AIR NEW SOURCE PERMITS		ACCOUNT NUMBER	EE0948Q
	PETROLEUM STORAGE TANK		REGISTRATION	45238

Location: 5022 DYER ST, EL PASO, TX, 79930
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: August 30, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 30, 2006 to August 30, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Andrea Park Phone: (512) 239 4575

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNER – PEACE PARTNERS CAR WASL, L.L.C.
   OPERATOR – BEN B. PARKS
4. If Yes, who was/were the prior owner(s)/operator(s)? PEACE PARTNERS CAR WASH, L.L.C
   WEST TEXAS G STORES INC
   RIVERA, INGILBERTO
   VALDEZ, DOLORES M,
   FUEL DEPOT, LLC
   Rivas Super Store
5. When did the change(s) in owner or operator occur? 02/01/2008
   02/02/2008
   09/18/2008
   08/17/2010
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 12/02/2006 ADMINORDER 2004-1219-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter D 382.085(b)
Description: Failure to comply with 30 TAC 115.252(2), RVP Fuel Requirements.

Effective Date: 05/11/2007 ADMINORDER 2006-1310-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter D 382.085(b)
Description: Failure to comply with the maximum 7.0 pounds per square inch absolute (psia) Reid Vapor Pressure fuel requirement. Specifically, a premium grade gasoline sample with a reading of 10.24 psia was taken from pump number four.

Effective Date: 08/23/2009 ADMINORDER 2008-1860-PST-E
Classification: Major
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(C)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(i)
Description: Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change.
Classification: Major
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the change or addition.
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)
Description: Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.

Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
Description: Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly.
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)
30 TAC Chapter 115, SubChapter C 115.244(3)
5C THSC Chapter 382 382.085(b)
Description: Failed to conduct daily and monthly inspections of the Stage II vapor recovery system.
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)
5C THSC Chapter 382 382.085(b)
Description: Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system.
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)
30 TAC Chapter 115, SubChapter C 115.246(3)
30 TAC Chapter 115, SubChapter C 115.246(5)
5C THSC Chapter 382 382.085(b)
Description: Failed to maintain Stage II records at the Station.
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THSC Chapter 382 382.085(b)
Description: Failed to verify proper operation of the Stage II equipment at least once every 12 months.
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs.
Classification: Major
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
Description: Failed to conduct effective manual or automatic inventory control procedures for the UST system.
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
Description: Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(iii)(I)
Description: Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	11/04/2008	(703180)	3	03/19/2010	(786602)	5	05/13/2010	(788863)
2	07/28/2009	(762548)	4	12/29/2009	(786756)	6	08/23/2011	(949252)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.) N/A
F. Environmental audits. N/A
G. Type of environmental management systems (EMSs). N/A
H. Voluntary on site compliance assessment dates. N/A
I. Participation in a voluntary pollution reduction program. N/A
J. Early compliance. N/A
Sites Outside of Texas N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING BEN B. PARKS DBA SUPER STOP 28; RN100813682	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-1706-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Ben B. Parks d/b/a Super Stop 28 ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent operated, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 5022 Dyer Street in El Paso, El Paso County, Texas (the "Station"). The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

2. During an investigation conducted on August 16, 2011, a City of El Paso Environmental Services Department investigator documented that Respondent:

   a. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual testing was not conducted by the due date of October 26, 2010; and

   b. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the Stage II daily inspection log, test results, maintenance records, and employee training records were not available for inspection.

3. Respondent received notice of the violations on or about August 30, 2011.

4. The Executive Director recognizes that Respondent no longer operates the Station as of March 27, 2012.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ben B. Parks d/b/a Super Stop 28" (the "EDPRP") in the TCEQ Chief Clerk's office on January 24, 2012.

6. By letter dated January 24, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on January 26, 2012, as evidenced by the signature on the card.

7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2.a., Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(3), (4), (5) and (6).

4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of thirteen thousand six hundred sixty-eight dollars ($13,668.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of thirteen thousand six hundred sixty-eight dollars ($13,668.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ben B. Parks d/b/a Super Stop 28; Docket No. 2011-1706-PST-E" to:

   Financial Administration Division, Revenues Section
   Texas Commission on Environmental Quality
   Attention: Cashier's Office, MC 214
   P.O. Box 13088
   Austin, Texas 78711-3088

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Respondent.

5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ben B. Parks d/b/a Super Stop 28" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 24, 2012.

The EDPRP was mailed to Respondent's last known address on January 24, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 26, 2012, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 5th day of March A.D. 2012.

Notary Signature

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013